

Protest of)
) Date: June 3, 1988
 HARVEY JANITORIAL SERVICE)
)
 Solicitation No. 129990-88-C-R145) P.S. Protest No. 88-31

DECISION

Harvey Janitorial Service (Harvey), the sole proprietorship of Mr. Henderson Wilson, protests the award of a contract for cleaning services at the Belle Chasse, LA, post office to Alvin Brooks, Jr. Harvey states that it was incorrectly found to be nonresponsible on this procurement.

Solicitation No. 129990-88-C-R145 was issued by the Atlanta Procurement and Materiel Management Service Office on March 9, 1988, with an offer due date of April 12. Seven offers were received, of which Harvey's was low. The contracting officer investigated whether Harvey, the incumbent contractor for this requirement, was a responsible bidder pursuant to Postal Contracting Manual (PCM) 1-900 et seq. Reports from the Supervisor, Postal Operations, indicated that over the period of contract performance, Harvey had done an extremely poor job in keeping the post office clean. Specific areas of concern included failure to perform requirements called out in the statement of work for cleaning the workroom areas and offices, to police the exterior area, to clean the platform, to wet mop the lobby, to dust and wash light fixtures and wash glass, and to sweep the exterior paved area. Further, Harvey failed to check in with the postmaster upon beginning and ending its duties and failed to spend adequate time performing the contract. These inadequacies were communicated to Harvey on March 26, 1987, in a letter from the contracting officer which discussed terminating the contract pursuant to its provisions.

Although the postmaster noticed some improvement in Harvey's performance immediately after the contracting officer's letter, postal and customer complaints had resumed by October or November, 1987. Detailed review of the contractor's performance during November 1987-January 1988 by the Supervisor, Postal Operations, indicated continuing problems and inadequacies in performance. The contracting officer found that Harvey's record of poor performance on the prior contract was sufficient to find it to be nonresponsible. Award was made to Alvin Brooks Jr. on April 18, and this protest followed.

Harvey claims that the contracting officer's determination of its nonresponsibility is in error. First, it claims that the supervisor's complaints were unfounded and unjustified, and were motivated solely by animus toward it. It alleges that the supervisor's personal bias is responsible for his unfavorable reports, since it has performed successfully on other postal contracts without any complaints. Second, Harvey argues that the postmaster continually failed to supply necessary cleaning items as was the Postal Service's contractual responsibility. Despite this handicap, it claims to have done an excellent job in the prior contract. Third, Harvey claims that it was ordered to perform duties which were outside the scope of the contractual requirements. Finally, Harvey asserts that it was never notified of the charges against it and that these unfavorable allegations were purposely withheld so that it could not correct them. It feels that it was not given full and fair consideration for the award.

In his report^{1/} to our office, the contracting officer states that Harvey has not furnished any evidence to rebut the information which establishes its past poor performance and present nonresponsibility as to this procurement.^{1/} He notes that the issues of lack of supplies and duties outside the scope of the contract were errors of the postmaster which were resolved by April, 1987. Further, the postmaster had made Harvey aware of its inadequacies on numerous occasions by telling it that various tasks had not been adequately performed. He affirms his decision that Harvey was nonresponsible.

The contracting officer's determination of a bidder's nonresponsibility is subject to limited review by our office:

A responsibility determination is a business judgment which involves balancing the contracting officer's conception of the requirement with available information about the contractor's resources and record. We well recognize the necessity of allowing the contracting officer considerable discretion in making such a subjective evaluation. Accordingly, we will not disturb a contracting officer's determination that a prospective contractor is nonresponsible, unless the decision is arbitrary, capricious, or not reasonably based on substantial information. Robertson & Penn, Inc., P.S. Protest No. 87-68, July 28, 1987; Year-A-Round Corporation, P.S. Protest No. 87-12, June 12, 1987. Where a factual conflict occurs between the statements of the contracting officer and those of the protestor, the "presumption of correctness" which attaches to the contracting officer's statements indicates that we must accept such statements as true. See Multigraphics, P.S. Protest No. 87-24, June 12,

^{1/}This report was incorrectly styled as a final decision pursuant to the Contract Disputes Act of 1978.

^{2/}The contracting officer emphasizes that his nonresponsibility finding only applies to the procurement here at issue.

1987; Lancom, Inc., P.S. Protest No. 85-48, October 9, 1985. Unsatisfactory past contractual performance may be, in and of itself, a sufficient grounds for a finding of nonresponsibility. See PCM 1.903.1 (iii); United Converters and Printers, P.S. Protest No. 80-19, July 24, 1980; G.D. Transportation, Inc., P.S. Protest No. 75-55, September 17, 1975. Information concerning a contractor's performance on a just-ended or current contract for the same or similar services is highly relevant in a responsibility determination. CCP Manufacturing Corporation, P.S. Protest No. 85-31, July 3, 1985; Tradewind Industries, Inc., P.S. Protest No. 85-1, February 14, 1985. "A nonresponsibility determination may be made on the basis of what the contracting agency reasonably perceives to be the proposed contractor's prior inadequate performance even if the contractor disputes the agency's interpretation." Graphic Technology, Inc., P.S. Protest No. 85-66, December 30, 1985, citing Howard Electric Company, Comp. Gen. Dec. B-193899, February 27, 1979, 79-1 CPD & 137.

Here, the file indicates persuasively the offeror's repeatedly inadequate contractual performance. By whatever criterion its performance is measured, Harvey's performance under the contract was inadequate. There is no evidence that the alleged failure to supply necessary cleaning items and orders to perform work outside the scope of the contract had any impact on Harvey's deficient performance after April, 1987. The contracting officer was not required to give Harvey an opportunity to rebut the allegations of deficient performance. The record indicates that Harvey knew of these allegations and, in the face of these assertions, failed to improve its contract performance. The evidence amply supports the contracting officer's determination that Harvey was a nonresponsible offeror on this contract.

The protest is denied.

William J. Jones
Associate General Counsel
Office of Contracts and Property Law

[checked against original JLS 2/24/93]